

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)
)
) File No. CR-09-38
) (MJD)
Plaintiff,)
)
vs.) Minneapolis, Minnesota
) May 13, 2013
Kamal Said Hassan,) 1:35 p.m.
)
Defendant.)
)
)
)

BEFORE THE HONORABLE MICHAEL J. DAVIS
UNITED STATES DISTRICT COURT JUDGE

(SENTENCING HEARING)

Proceedings recorded by mechanical stenography;
transcript produced by computer.

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1 MS. ATWAL: We have, Your Honor.

2 MR. NARUS: We have, Your Honor.

3 THE COURT: Any objections to the factual
4 statements contained in the presentence investigation
5 report?

6 MS. ATWAL: Not as to the factual, Your Honor.

7 MR. NARUS: No, not as to the facts, Your Honor.

8 THE COURT: The Court will adopt the factual
9 statements contained in the presentence investigation report
10 as its own.

11 Counsel, you have objections to the advisory
12 guideline calculations?

13 MS. ATWAL: I do, Your Honor. The first objection
14 relates to the 12-level enhancement for what's called the
15 victim related enhancement and the second one is to minor
16 role and the third one is to the supervised release.

17 Beginning first with the 12-level enhancement,
18 which calls for if there's a terrorism related act that's
19 intended to influence a government, the base offense level,
20 which is already at 33, is enhanced 12 levels and somebody
21 who has a Criminal History Category I, II, or III, and in
22 this case Kamal has a criminal history category of I,
23 they're automatically moved to Criminal History Category VI.

24 Recognizing some of the case law that has come out
25 of the Second Circuit and the Sixth Circuit and the Eighth

1 Circuit has yet to rule, I respectfully disagree with the
2 enhancement that's included in the PSR and is argued by the
3 government.

4 First as to the 12-level enhancement that is added
5 on, not even talking about the criminal history category,
6 the question for the Court is did Kamal Hassan's actions,
7 that is, providing himself to al-Shabaab in Somalia, was
8 that intended to influence the government.

9 What the guidelines don't make clear is what
10 government. Is it the government of Ethiopia? And that is
11 because Kamal Hassan went to Somalia to fight Ethiopian
12 troops, to remove Ethiopians from the country of Somalia.
13 Or do the guidelines refer to government as in the
14 government of Somalia? Or do the guidelines refer to the
15 government as the United States? Which we have
16 jurisdiction -- this country is the one that has
17 jurisdiction because the acts began here in Minnesota.

18 Because of, first of all, the vagueness of what
19 "government" means and what the influence of government
20 actually --

21 THE COURT: Is there really vagueness dealing with
22 what the government is? Isn't this just being -- because
23 the Eighth Circuit hasn't ruled on it, but the other
24 circuits have certainly ruled on it and shouldn't I follow
25 those interpretations, which make sense?

1 MS. ATWAL: Your Honor, in the case law that has
2 come out there's one case, I believe, that talked about
3 whether folks in the U.S. were trying to influence the
4 Colombian government. So I believe in that case they said,
5 look, even if it's a government of a foreign country, such
6 as Colombia, this enhancement can apply. But that was just
7 one case. The other cases it's always something related to
8 the United States.

9 And I understand that, yes, "government" can mean
10 many things. Like I said, it could be the government of
11 Somalia or the government of the U.S. I'm arguing that it
12 is vague and shouldn't apply in this case.

13 The second part --

14 THE COURT: Are you saying that if al-Shabaab, who
15 has made a statement that they're going to take Islam to
16 Jerusalem, that if they started attacking Israel, that
17 Israel would not be a government because Israel is not
18 acknowledged as a government by the vast majority of the
19 Muslim countries in this world?

20 MS. ATWAL: Certainly not, Your Honor. I mean,
21 that would be absolutely -- if there was some hook with some
22 jurisdiction with the federal government of the United
23 States and that somehow was influencing --

24 THE COURT: Well, wasn't the Transitional
25 Government of Somalia the government for Somalia?

1 MS. ATWAL: At the time it was recognized by the
2 United States as a government. It wasn't officially
3 recognized, the Somalia government has never been officially
4 recognized until recently, in January 2012, when Hillary
5 Clinton and the newly-elected president met and said, okay,
6 we are going to officially recognize you.

7 I agree -- Matthew Bryden, who is the government
8 for the -- expert for the United States, said at trial the
9 Transitional Federal Government was recognized by Western
10 countries such as the United States, but it wasn't
11 officially in place.

12 As we know, the history of Somalia has always been
13 in the past 20 years --

14 THE COURT: If it's recognized by the United
15 States, isn't that all we need here?

16 MS. ATWAL: No, I respectfully disagree.

17 THE COURT: Are you saying that as a district
18 court judge I'm supposed to determine when it is in place?

19 MS. ATWAL: No, Your Honor. What I'm asking the
20 Court to do is to look at the guideline -- the advisory
21 guideline enhancement that does say if it's -- for an
22 offense that Kamal Hassan has pled guilty to, did that act
23 intend to influence a government or the government. And
24 what I am asking the Court to say is what --

25 THE COURT: Well, government would be the

1 Transitional Government.

2 MS. ATWAL: And, again, what I'm going to argue to
3 the Court and respectfully put on the record is that that's
4 vague, "the government." Whether Somalia --

5 THE COURT: This is argument and I can ask
6 questions.

7 MS. ATWAL: Absolutely, Your Honor.

8 THE COURT: If you just want to make a statement,
9 that's one thing, but I'm trying to understand your
10 position.

11 MS. ATWAL: Your Honor, my position is and what I
12 argue to the Court is that the Court should adopt that that
13 guideline enhancement and a victim related offense, when it
14 speaks of the government, it's vague as to what is the
15 government, whether it is the government of Ethiopia,
16 removing their troops, or --

17 THE COURT: I don't understand. You say that if
18 al-Shabaab marched to Jerusalem, that it would be a
19 different situation with Israel. I don't understand that
20 because since 1947 Israel has not been recognized by the
21 Arab countries as being a country. Although it's been
22 recognized by the Western countries, it certainly hasn't
23 been by Islamic countries, even the ones that are right next
24 to it.

25 And so with that, whether or not Hamas,

1 al-Shabaab, or any other terrorist group that the
2 government has -- United States government has designated as
3 a terrorist group, you're saying that they could do whatever
4 harm they would want to do and I or the court would not have
5 jurisdiction to use the terrorism enhancement.

6 MS. ATWAL: That's certainly not what I'm arguing
7 here, Judge. What I'm saying to the Court is and what my
8 argument to you is --

9 THE COURT: Well, let's do it step by step.

10 MS. ATWAL: Okay.

11 THE COURT: If you say that it's a question mark
12 dealing with what a government is, why is Somalia and the
13 Transitional Government any different than Israel?

14 MS. ATWAL: Here's why. Israel has been
15 recognized as -- the government that's in Israel has been
16 recognized by the United States for many years officially.
17 It's been done. It's been documented. We have relations
18 with that country and it's always been that way.

19 With Somalia, what was happening is for the past
20 20 years, and we can even go further back than that --

21 THE COURT: But haven't you just -- it's come out
22 of your mouth, that you said that we recognized the
23 Transitional Government.

24 MS. ATWAL: But it wasn't official. What Matthew
25 Bryden --

1 THE COURT: So I'm supposed to decide what is
2 official and not official and what a government is?

3 MS. ATWAL: What I'm asking the Court to do is
4 when we're interpreting the guideline provision that we have
5 before us today, that the Eighth Circuit hasn't interpreted,
6 the Second and Sixth Circuits has interpreted to mean
7 international governments, I'm arguing to the Court that it
8 is vague, that what government is it supposed to influence,
9 the behavior of the defendant, what government are we
10 talking about.

11 THE COURT: Well, if it's the Transitional
12 Government, why is that vague?

13 MS. ATWAL: Well, first of all, whether it is --
14 first of all, whether it's the Transitional Government or
15 the United States government or rather it's the Ethiopian
16 government, was his behavior intended to --

17 THE COURT: We know it wasn't the Ethiopian
18 government. We know that the Transitional Government
19 invited the Ethiopian troops to come in. It wasn't that
20 Ethiopia was invading Somalia, like it had many times
21 before.

22 MS. ATWAL: Absolutely, yep.

23 THE COURT: So what's the vagueness? I'm still
24 trying to figure out what the vagueness is.

25 MS. ATWAL: I'm arguing to the Court that it is

1 vague when the guideline itself just says "the government."

2 THE COURT: Well --

3 MS. ATWAL: I understand that the Court is saying
4 that the government is the Transitional Government.

5 THE COURT: So you want me not to think of the
6 Transitional Government to be the government, but to be
7 vague and it could be something else. How can I say that
8 it's the Ethiopian government --

9 MS. ATWAL: Well --

10 THE COURT: -- or the Ugandan government?

11 MS. ATWAL: That's exactly my point.

12 THE COURT: How could I say that?

13 MS. ATWAL: I'm not asking the Court to say that.
14 What I'm saying is the guideline itself is vague. It just
15 says "the government."

16 And here we have -- like I said, if the Court is
17 saying the government is the Transitional Federal
18 Government, the TFG, then, again, it wasn't officially
19 recognized until January of 2012.

20 But I will acknowledge that the U.S. had said we
21 recognize that government, not officially, but we do
22 recognize its standing as being the government right now,
23 back in 2007, 2008, and 2009. But the official recognition
24 for that government didn't come until recent elections.

25 Moving on to my second part, the reason for this

1 enhancement was because Congress wanted to say, look, people
2 that are terrorists should be treated more harshly. If
3 they're doing things to influence governments, they are more
4 likely to go back out and do it again and again, there's a
5 risk of people committing future crimes.

6 Somebody that's in Criminal History Category I can
7 be booted all the way up to Criminal History Category VI,
8 which grossly exaggerates the advisory guideline range. And
9 in this case Mr. Hassan falls at the very maximum of
10 38 years because of that movement from Criminal History
11 Category I to Category VI.

12 There has been case law that said even on these
13 type of cases the court absolutely has the authority to say
14 that I'm going to depart below that, I don't have to treat
15 this person as in Criminal History Category VI.

16 And this is a perfect example of why somebody
17 doesn't -- with this terrorism enhancement, with the 12
18 levels and the Criminal History Category VI, shouldn't be
19 placed in that category, because it does grossly exaggerate
20 who this person is and the crime that he is being punished
21 for.

22 So I would ask the Court not to apply the 12-level
23 enhancement and not to place him in Criminal History
24 Category VI. Now, as the Court is aware, in my position
25 pleading I have argued that if that is applied, I am asking

1 for a departure.

2 THE COURT: Government's position dealing with the
3 terrorism enhancement under 3A1.4(a)?

4 MR. NARUS: Yes, Your Honor. And if I could back
5 up one moment. You asked about objections. We don't have
6 an objection, a factual objection necessarily, but with
7 respect to the proceedings, in paragraph 93 it says that
8 Mr. Hassan was debriefed in Yemen in late 2008 and we would
9 ask that that be January 2009. I don't imagine that would
10 raise any objection from the defense.

11 MS. ATWAL: No objection, Your Honor.

12 THE COURT: That will be amended to 2009.

13 MR. NARUS: Your Honor, with respect to the 3A
14 enhancement, I think we need to back up and look at
15 18 U.S.C. 2332b and this is what defines a federal crime of
16 terrorism. There it says a federal crime of terrorism means
17 an offense such as, two of which the defendant committed,
18 2339A and 2339A [sic], which is to say he provided himself
19 to al-Shabaab and he provided himself to a conspiracy to
20 kill abroad.

21 So if you have those two offenses, then you move
22 to the second prong, which is is the offense calculated to
23 influence or affect the conduct of government by
24 intimidation or coercion or to retaliate against government
25 conduct.

1 What I submit to Your Honor that Congress was
2 intending here and what the guidelines are trying to capture
3 is crimes of terrorism that are within the jurisdiction of
4 the United States but not necessarily directed at the
5 government of the United States. It can be directed --
6 terrorism can be directed internationally. It can be
7 directed in Somalia, other countries. And what Congress is
8 trying to capture here is that that conduct still
9 constitutes terrorism, whether it's directed at our
10 government or another government.

11 So moving from there to the facts of this case, I
12 would submit and the government would submit that there are
13 two governments here that the defendant's crimes were
14 intended to or calculated to influence or affect the conduct
15 of government. First I'll start with the TFG, which has
16 been discussed here a second ago.

17 Mr. Hassan testified before Your Honor in a
18 separate trial, United States vs. Mahamud Said Omar,
19 and he testified for three days and Your Honor questioned
20 him.

21 One of the exhibits that we presented in that
22 trial and we plan to offer today at the appropriate time is
23 a picture from the training camp where Mr. Hassan trained in
24 Somalia between about February and June of 2008 after the
25 designation of al-Shabaab. During this period of time the

1 people in this al-Shabaab training camp used a photograph of
2 the former president of the TFG for bullet practice. And we
3 have that exhibit which we can present for Your Honor and we
4 plan to admit the video for appellate purposes.

5 We have also attached the transcripts to our
6 pleadings of Mr. Hassan's testimony, Mr. Salah Ahmed,
7 Mr. Abdifatah Isse, Mr. Ahmed Hussein Mahamud, and Mr. Matt
8 Bryden.

9 And part of that reason was to present to Your
10 Honor the specific facts so Your Honor can make a specific
11 finding on this, which our reading of the cases requires
12 Your Honor to make a specific finding supporting the 3A
13 enhancement.

14 Now, with respect to the TFG, a question that was
15 raised in defense counsel's pleading was whether the
16 defendant's motivation was to destabilize Somalia or to
17 overthrow the Transitional Federal Government.

18 Your Honor, we would cite the Court to Awan in the
19 Second Circuit, and it's in our papers, and it says that the
20 defendant's motive isn't what the court should focus on.
21 What the court should focus on is whether the effect of the
22 defendant's offenses was calculated to influence or affect
23 the conduct of government.

24 So here I submit to you that Mr. Hassan's crime of
25 providing material support to al-Shabaab after designation

1 clearly had the effect of destabilizing Somalia, of
2 providing support to a group that had as its objective the
3 overthrow of the Transitional Federal Government.

4 And Mr. Hassan, to his credit, testified to these
5 facts very candidly before Your Honor, that he learned these
6 facts in the training camp. He certainly didn't know them
7 when he left here in the fall, but by the time that he was
8 providing himself in the training camp he had a very clear
9 understanding that al-Shabaab was a designated foreign
10 terrorist organization, that he was a member or trainee of
11 that group, and that an objective of that group was to
12 overthrow Somalia and I believe Mr. Hassan testified impose
13 its version of sharia law all the way to Jerusalem, I
14 believe is what one of the leaders told Mr. Hassan.

15 The second government that the United States would
16 submit is implicated here is quite plainly the objective of
17 this conspiracy.

18 Mr. Hassan in the beginning of Ramadan of 2007, in
19 what can only be described as a stark departure from his
20 life up until that point, left the United States to go to
21 Somalia to fight with groups aligned with the Islamic Courts
22 Union.

23 That conspiracy had as its objective to evict the
24 Ethiopians from Somalia and the defendant, as well as his
25 co-conspirators, all understood that that would involve

1 violence, it would involve AK-47s or machine guns, and that
2 it would not involve any sort of diplomatic effort to remove
3 the Ethiopians from Somalia. This was a conspiracy to kill
4 and the defendant provided himself to that.

5 With respect to whether the government is the
6 United States, Your Honor, the United States would refer you
7 to page 20 of our pleadings and cite to you the cases from
8 the Fifth Circuit, the case from the Northern District of
9 New York, as well as the Second Circuit.

10 In those cases, Your Honor, other courts have
11 found that a conspiracy to disrupt or calculated to
12 influence the conduct of the country of Colombia, the
13 countries of Egypt and Pakistan, the objectives to
14 destabilize those countries or efforts that were calculated
15 to influence the conduct or retaliate against the conduct of
16 those governments was sufficient to satisfy the 3A
17 enhancement, the terrorism enhancement.

18 I would also refer Your Honor to a case we cite at
19 page 20 to 21 of our pleading, United States vs. Assi,
20 A-s-s-i, a Sixth Circuit case from 2011, I believe it's
21 unpublished.

22 And there the defense advanced a very similar
23 argument to the one that's being advanced here and that was
24 that Israel was not properly occupying the areas where the
25 defendant had acted, in other words, it had exceeded its

1 borders and for that reason did not qualify as a government
2 under the terrorism enhancement.

3 And the court there stated quite plainly that
4 Congress did not intend for United States district judges,
5 such as yourself, to determine whether a foreign state is
6 complying with its international obligations before
7 determining whether a person who has pled guilty to
8 providing support to a foreign terrorist organization is
9 subject to the rule.

10 Ms. Atwal is correct that the Eighth Circuit
11 hasn't ruled on this issue expressly. Other courts have and
12 the United States would encourage Your Honor both to join
13 the other courts and find that the defendant's offenses were
14 calculated to influence the governments -- the Transitional
15 Federal Government and the Ethiopian government, which the
16 government submits is consistent with the purpose behind the
17 terrorism enhancement, with the purpose behind increasing
18 the statutory -- or the criminal history category and the
19 offense level by 12 levels to capture conduct started here
20 in the United States, here in the Twin Cities, that has as
21 its objective influencing governments around the world.

22 Finally, I would just refer the Court to a few
23 examples from Awan, it's A-w-a-n, where the court points out
24 and provides examples that someone who had intended to
25 murder the head of state and did so either for money or for

1 his own personal prestige would still be subject to the
2 enhancement because it's not his particular motive that is
3 the court's concern, but whether the offense that he is
4 committing is calculated to influence that government.

5 So here defense counsel's argument that Mr. Hassan
6 did not intend to overthrow the Transitional Federal
7 Government, the United States respectfully disagrees and
8 argues that it is the offense that he committed that should
9 be examined under these circumstances.

10 The second point I would make, leaving aside the
11 12-level enhancement, is the criminal history category,
12 moving it out to VI; and that certainly is a more -- that's
13 quite a substantial increase in the sentence here.

14 As we've pointed out in our response to
15 Ms. Atwal's pleadings, the movement out to Criminal History
16 Category VI is supposed to capture recidivism and the
17 concern of the sentencing guidelines and Congress about
18 recidivism and its effect on communities.

19 The United States submits that the movement out to
20 Criminal History Category VI under these circumstances takes
21 into account the danger attendant to recidivism by people
22 convicted of terrorism offenses.

23 A drug trafficker with prior convictions who
24 relapses into drug trafficking of course causes a scourge on
25 the community and furnishes drugs to people here in the

1 community.

2 A person convicted of terrorism offenses who
3 lapses into recidivism and commits terrorism offenses again
4 can commit unimaginable atrocities here in the United
5 States.

6 So the United States respectfully requests that
7 the Court find that the terrorism enhancement both
8 accurately captures the government here, which is the
9 defendant's conduct with both the Transitional Federal
10 Government and the government of Ethiopia, and that the
11 criminal history category of VI is appropriate under these
12 circumstances.

13 THE COURT: Were you going to introduce -- you
14 said something about exhibits or something.

15 MR. NARUS: Yes, sir. We have labeled I believe
16 11 exhibits. We've provided copies to the Court and to
17 defense counsel. We've also provided an exhibit list to
18 Your Honor.

19 I should add that the plea agreement entered
20 between the parties in February of 2009 and a subsequent
21 plea agreement in August of 2009 both leave open both the
22 appellate rights of the defendant as well as the defendant's
23 right to contest the 3A enhancement in this case.

24 That hasn't always been the case. There have been
25 other cases around the country where the 3A enhancement has

1 not been contested pursuant to the plea agreement. That is
2 not the case here.

3 And because this case -- both to make the record
4 here as well as to assist the appellate court, we have
5 attached 11 exhibits that include both an exhibit sticker
6 for Your Honor for this sentencing hearing as well as the
7 original exhibit sticker from the testimony of Mr. Hassan at
8 the trial of Mahamud Said Omar.

9 I can walk through these exhibits in chronological
10 order, but the exhibit I was referring to is marked for
11 purposes here as Government's Exhibit 6. It was
12 Government's Exhibit 16 at the trial of Mahamud Said Omar.

13 MS. BELL: Do you want me to put it up?

14 MR. NARUS: Yes, please. It's 116-007 at the
15 bottom, the fourth page.

16 Included in these exhibits, Your Honor, we have
17 included both the video taken at the al-Shabaab training
18 camp in the spring of 2008 as well as an ambush video
19 created by al-Shabaab in the summer, July, of 2008. We've
20 attached those as -- attached the transcripts of those
21 videos.

22 THE COURT: What's that? Exhibit Number 7?

23 MR. NARUS: That's correct, Your Honor, Exhibit
24 Number 7 is the training camp video. Exhibit Number 9 is
25 what we have called the ambush video. And I should note for

1 the record these were played during the testimony of
2 Mr. Hassan during the trial of Mahamud Said Omar and he
3 narrated aspects of these.

4 THE COURT: And Exhibit Number 8 is the video of
5 the transcript, Number 9?

6 MR. NARUS: Your Honor, Exhibit Number 8 are
7 stills of the video. So we have attached both the video and
8 some stills.

9 THE COURT: All right. Any objections by the
10 defense?

11 MS. ATWAL: No, Your Honor.

12 THE COURT: Exhibits 1 through 11 will be
13 admitted.

14 Anything further for the government on this issue?

15 MR. NARUS: No, Your Honor. Thank you.

16 THE COURT: Anything further for the defense?

17 MS. ATWAL: No, Your Honor.

18 THE COURT: All right. The Court, having read the
19 submissions of counsel, the cases involving this matter
20 dealing with the enhancement under 3A1.4(a) dealing with a
21 terrorism enhancement, plus hearing the arguments in court
22 this afternoon, the Court will grant the enhancement, the
23 12-level enhancement, for felony offenses that involved or
24 intended to promote a federal crime of terrorism. 3A1.4(b)
25 provides that where subdivision (a) applies, the applicable

1 criminal history category is VI.

2 A federal crime of terrorism is defined as conduct
3 that is calculated to influence or affect the conduct of
4 government by intimidation or coercion or to retaliate
5 against government conduct and is a violation of crimes
6 listed in Title 18, United States Code, Section 2232b(g)(5).
7 Two of the counts of conviction in this case, Title 18,
8 United States Code, Section 2339A and Section 2339B(a)(1),
9 are listed in Section 2232b(g)(5).

10 To determine whether the crime of conviction was
11 calculated to influence, affect, or retaliate against a
12 government, it is not necessary that the defendant was
13 motivated to retaliate, influence, or affect the conduct of
14 a government.

15 The enhancement will apply where there is evidence
16 that the defendant intended to promote a crime calculated to
17 have such an effect, that his offenses were intended to
18 promote a federal crime of terrorism as defined by
19 2232b(g)(5), whatever the defendant's reason for committing
20 them.

21 The terrorism enhancement also applies to offenses
22 that are not themselves federal crimes of terrorism, but
23 where the evidence supports a finding that the crime was
24 committed with the intention of promoting a federal crime of
25 terrorism. For example, a conviction for obstructing a

1 criminal investigation of a federal crime of terrorism can
2 be considered as promoting such a crime where such
3 obstruction prevents the government from finding out about
4 it.

5 In addition, it is not necessary that the federal
6 crime of terrorism affected the conduct of the United States
7 or was meant to retaliate against the United States. The
8 enhancement applies for foreign governments.

9 Further, it is not necessary that the Court make
10 findings as to the legitimacy of the government affected or
11 retaliated against.

12 Based on the evidence in the record, the Court
13 finds that the terrorism enhancement clearly applies in this
14 case. The facts stipulated to by the defendant in his plea
15 agreements and his trial testimony in the Omar matter
16 demonstrates that the defendant's actions involved or were
17 intended to promote crimes that were calculated to influence
18 or affect the activities of the Ethiopian government and the
19 Transitional Federal Government in Somalia.

20 He admitted to traveling to Somalia to fight
21 against the Ethiopians in order to cause their removal from
22 Somalia. He also admitted that he did so under the
23 direction and control of al-Shabaab.

24 He testified that he learned more of al-Shabaab at
25 the safe house in Marka and its mission to take over

1 Somalia, then its neighboring countries, all the way to
2 Jerusalem, and to implement its own interpretation of sharia
3 law.

4 He admitted that he participated in training camps
5 and in combat with other members of al-Shabaab. He
6 participated in recruitment videos produced by al-Shabaab,
7 which included the use of a photo of the former president of
8 Somalia for target practice.

9 The defendant also took actions that were intended
10 to promote a federal crime of terrorism when he provided
11 false statements to the FBI to prevent the FBI from finding
12 out about other members of the conspiracy here and in
13 Somalia.

14 And that's a brief summary of my factual basis for
15 granting the 3A1.4(a) enhancement. My sentencing
16 memorandum, of course, will fully explain the Court's
17 reasons.

18 All right. Let's move on to the next.

19 MS. ATWAL: Your Honor, my second objection to the
20 PSR relates to the role adjustment. The PSR and the
21 government argue that Mr. Hassan was an average participant
22 in this conspiracy.

23 When looking at this conspiracy as a whole, down
24 to the recruiters that were here in Minnesota, the leaders
25 that were in Somalia, to the minimal players that gave money

1 to al-Shabaab, Mr. Hassan's role was not average, it was
2 minor, and we are asking for a two-level reduction.

3 To support this I point the Court to his trial
4 testimony and what the Court heard during the trial of
5 United States vs. Omar. And in that trial Mr. Hassan spoke
6 about how he was recruited into this conspiracy, how he was
7 told that it was his duty.

8 When he didn't have the funds to fly to Somalia,
9 they helped him and told him how to do the fund-raising.
10 When he couldn't get away with leaving to Somalia, they did
11 a fake itinerary for him to show his father so his dad would
12 let him go.

13 And then once he was in Somalia, he was constantly
14 under the watch of whether it was armed guards or other
15 people that were running the camp and people higher than
16 him.

17 When people did escape -- that was in early
18 February -- Mr. Hassan's phone was taken away. He was not
19 allowed to make any type of communication with the outside
20 world. And, again, the leaders or the people that were
21 higher up, they could absolutely do that, but he was kept to
22 his role, that being minimal -- minor, excuse me.

23 He was basically a foot soldier. They told him
24 this is how you are going to train. We want you to build.
25 We want you to go get water. We want you to make a meal.

1 It's all those things that he was doing at the direction of
2 other people. And then when he was told to go into ambush
3 and go to fight the troops, he did that as a foot soldier.

4 So the entire time -- if you look at the
5 conspiracy as a whole, to the leaders of al-Shabaab, the
6 ones that are always on the YouTube videos, the spokesman
7 for al-Shabaab, the people that made the video, all the way
8 down to the folks that are right here in Minnesota that
9 recruited him, respectfully I argue to the Court that his
10 role was minor compared to other people in this conspiracy.

11 THE COURT: Thank you.

12 For the government?

13 MR. NARUS: Your Honor, the government disagrees
14 with defense counsel's request for a role adjustment.

15 There are many ways that one can provide material
16 support to a terrorism organization or a conspiracy to kill
17 abroad and later this week Your Honor will hear other
18 defendants who provided different types of material support,
19 whether it's funding in the form of cash, whether it's rides
20 to the airport, whether it's assisting people with buying
21 plane tickets. What Mr. Hassan did was in some ways the
22 most necessary form of support that al-Shabaab needs in the
23 form of people who are willing to carry guns and go into
24 battle.

25 On these facts, Your Honor, the defendant's

1 conduct of serving as a foot soldier, traveling to Somalia,
2 being trained, and then, in fact, conducting an ambush with
3 other al-Shabaab members certainly cannot be described as
4 minor. The government would submit it's an average role for
5 a member of al-Shabaab who has made it to Somalia, graduated
6 from the training camp, and is participating in an ambush.

7 And for those reasons the United States
8 respectfully disagrees with defense counsel.

9 THE COURT: The Court will deny the defense motion
10 for a role reduction.

11 Next matter.

12 MS. ATWAL: The third objection, Your Honor, was
13 to the supervised release. And as we stated in -- as we
14 signed in the plea agreements, originally we thought the
15 supervised release was two to three years. However, upon
16 reviewing the statute I am in agreement with the Probation
17 Office and would agree that the life -- the supervision term
18 that the Court can impose is a lifetime supervision.

19 THE COURT: There's no objection to that?

20 MR. NARUS: No. Thank you, Your Honor.

21 THE COURT: Okay. The supervised release is two
22 years to life.

23 Anything further for the defense dealing with the
24 advisory guideline calculations?

25 MS. ATWAL: No, Your Honor.

1 THE COURT: Anything further for the government
2 dealing with the advisory guideline calculations?

3 MR. NARUS: No. Thank you.

4 THE COURT: The Court finds that the total offense
5 level is 44, the criminal history category is VI, custody
6 range is 456 months, supervised release is two years to life
7 imprisonment, fine range is 25,000 to 250,000 dollars, and a
8 mandatory special assessment of \$300.

9 Ms. Atwal, do you wish to argue for a variance?

10 MS. ATWAL: I do, Your Honor. And I apologize.
11 Before I go to the variance, I would like to speak of my two
12 departure motions.

13 THE COURT: Departure. Go ahead.

14 MS. ATWAL: One is the traditional one for
15 overstated criminal history. As the Court has already ruled
16 that Mr. Hassan --

17 THE COURT: Let me stop you there. I think we can
18 eliminate a number of these things by the government has
19 filed a motion for a 5K1.1 downward departure because of
20 substantial assistance.

21 The Court has received *ex parte* and *in camera* --
22 no, it's not *ex parte*, you've seen it -- *in camera* and under
23 seal their reasons for submitting this motion to the Court
24 for a substantial assistance departure for Mr. Hassan.

25 Is there anything else that I need to know -- I

1 know that I received a letter from you this weekend
2 regarding your position dealing with the 5K. You might as
3 well put that on the record.

4 MS. ATWAL: Yes.

5 THE COURT: And anything else that you feel the
6 Court should know about the 5K1.1 substantial assistance
7 motion made to the Court by the government.

8 MS. ATWAL: Yes, Your Honor.

9 THE COURT: I'm assuming that you agree with it.

10 MS. ATWAL: I do, and I am asking the Court to
11 grant that motion.

12 I have never seen a case where there's been this
13 level of cooperation. I've been working in the federal
14 system for 12 years, worked with a lot of defendants and a
15 lot of them have cooperated. And the only word that comes
16 to mind is extraordinary. The amount of defendants he was
17 able to provide information and the government could in turn
18 prosecute was outstanding.

19 He was the first one in the door, cooperated
20 without a lawyer, and throughout this whole process there
21 was times when Mr. Mohring and I weren't available and he
22 didn't hesitate not once, to say, nope, I want my lawyer
23 here.

24 When there was a member of our community that went
25 missing in Somalia and word got out that that young man had

1 died, I remember I was on vacation and Mr. Hassan right away
2 said let me help you out so I can bring answers to this
3 community so they can know what happened to that young man
4 that left.

5 Whenever these gentlemen over here, the agents,
6 wanted him, he was there. Whenever they went to the jail,
7 he didn't ask for a special room. He didn't ask that the
8 FBI stay hidden. They met out there in the open where other
9 inmates can see clearly that's not Manny Atwal he is meeting
10 with. They could see that. They knew what he was doing.

11 And the four years that he's been in prison, I'm
12 not talking about the first seven where he was with the FBI,
13 for four years in and out he has seen people come and go,
14 come and go, and Kamal sits there. And they all know what
15 he is doing. They all know he is cooperating.

16 Perhaps the most terrifying thing was when he took
17 that stand and testified, again, to get credit, but also, as
18 he said in his letter, I owe it to my community so they hear
19 what happened. And this Court didn't take it easy on Kamal.
20 This Court asked him a lot of deep questions.

21 And when that video was played, he told me his
22 stomach was upset watching it and that he was upsetting the
23 Court, but he's like I have to do this because I did do it,
24 I committed a crime.

25 And when they would play, when the government

1 would play this video, when foreign agents would come and
2 play the video and ask him questions, he would tell the same
3 story over and over again.

4 Sometimes our proffers would be eight to ten
5 hours. Sometimes it would be 6:00 at night, let's meet,
6 we've got to get this going. And he kept doing it every
7 single time.

8 Kamal, we want you to wear a wire. Okay, I'll do
9 it. Kamal, we need you to make a phone call at 3:00 in the
10 morning. I'll do it. Kamal, we need you to send e-mails.
11 I'll do it. Every step of the way he did it.

12 And his family who sits in the second row to the
13 Court's left, they wanted to assist. Let's not forget how
14 this all started, why Kamal is standing here and not six
15 feet under in Africa or not someplace in Yemen living his
16 own life. That family reached out and said, FBI, we know
17 where Kamal is and he wants to help. And we've heard about
18 the extraordinary efforts that the United States government
19 took to assure that Kamal was safe and to bring him back to
20 the United States.

21 Now, I know a big part of the cooperation is that
22 he did lie for those seven months, and what he did was he
23 left out people that were here in Minnesota because he
24 feared for his safety and his family's safety. Let's not
25 forget that one of the people he left out was the person

1 that did a false itinerary for him, told him how he can get
2 away with it, told him it was his duty.

3 And let's not forget the people that he left out
4 in Somalia were the folks that when he said, Look, my dad is
5 going to the mosque, he's causing a ruckus, I need to go
6 home, they said, You're not going to go home.

7 And when him and Salah Ahmed wanted to leave and
8 discussed leaving, they were shown videos. This is what
9 happens to people that try and leave al-Shabaab, you're
10 dead.

11 So he left out the names of the leaders down
12 there, Samatar and a woman named Hooyo, who ran one of the
13 safe houses, and he left out a Minnesotan.

14 And the biggest thing he left out was that he was
15 involved in the ambush. And as he very eloquently put in
16 his letter to the Court, something I did not help him with,
17 Mr. Mohring didn't help him with, the same thing he told the
18 Court during the trial is he didn't want the government to
19 think he was a terrorist, that he was a bad guy that would
20 pick up guns and do harm to people, and he left that out.

21 But after April 1st the government has trusted him
22 100 percent. How do we know that? They put him up there
23 and had him testify for the whole world to hear and he sat
24 there and he listened and he answered their questions, he
25 answered the Court's questions, he answered Mr. Hopeman's

1 grueling cross exam that lasted over a day and a half. And
2 never once did he waiver from his story. He kept admitting
3 over and over again what he did.

4 He was proactive in his cooperation. When the
5 government wanted to investigate somebody or when they
6 wanted to investigate something that was going on in
7 Somalia, Kamal would say how about we try this or let's word
8 the e-mail in this way because then people are going to
9 really know it's me or when he was doing undercover work he
10 would make suggestions such as let my family set up the
11 meeting so when I go in and meet with the person you are
12 investigating, it looks more natural. He was proactive in
13 his cooperation, and we don't see that very often. Without
14 counsel, without hesitation he went to the limits. He did
15 everything he could.

16 Mr. Hassan has asked us over and over again what's
17 going to happen, what's going to happen here today. And we
18 don't know, but what I can tell Mr. Hassan is he's done
19 everything that he could.

20 And he wants to continue helping no matter what
21 happens here today. If he goes to prison for 38 years, if
22 he goes to prison for 20 years, it doesn't matter to him
23 because at the end of the day he wants everybody in this
24 courtroom to know and everybody who reads the media and
25 responds to the media and particularly his parents that he

1 is so sorry for what he did and the only way he can think of
2 to prove that is not his words, but his actions.

3 So if the government calls tomorrow, even after
4 they have said what they need to say -- obviously they are
5 advocating for their sentence -- he is still going to be
6 there for them. He's going to be there if they need him.

7 You may recall at the detention hearing that we
8 had back in September the government argued that he
9 shouldn't be released and made comments about Mr. Hassan
10 that weren't very nice, that he didn't feel were very nice
11 to him. He didn't hesitate. He still continued to
12 cooperate.

13 Whether it's international, whether it's his own
14 government here in the United States, he was the first one
15 in and continued to cooperate. And although he lied at the
16 beginning, he's been truthful ever since.

17 The government even today in their position
18 pleadings cite to Mr. Hassan's own testimony, his own words
19 to advocate for their sentences in the other defendants'
20 cases. That's big.

21 And even though he left out Mr. Mohamed initially,
22 let's not forget he was eventually prosecuted and when the
23 government called on him to testify against him he said,
24 absolutely, I will do it and sat through trial preparation
25 and went through the story over and over again. And

1 Mr. Mohamed knew that Kamal was going to be a witness
2 against him and eventually he did plead guilty.

3 So although he made a mistake about him, he did
4 come clean and the government was able to prosecute the
5 individual and Kamal was in full agreement that he would
6 testify.

7 I just have to say again his cooperation, as I
8 state in my position pleading and the letter, again, that I
9 sent to the Court, is extraordinary, it's significant. I
10 don't even know the full extent of all of his cooperation.

11 But I do know this. What he has done to show his
12 remorse, to cooperate with the government, to keep his end
13 of the bargain from when he was in Yemen and when he turned
14 himself in and made that decision to cooperate, he's kept
15 his end of the bargain and for that, Your Honor, he deserves
16 a very significant departure.

17 THE COURT: And you saw the recommendation of the
18 government. Do you agree with that recommendation?

19 MS. ATWAL: I do not, Your Honor. I think it
20 undermines -- it doesn't give enough credit to where credit
21 is deserved in this case. And I'm not talking about
22 variance factors. I'm simply just talking about the
23 cooperation here.

24 I do believe it is beyond what I have seen. In
25 looking around the country at other people, other people

1 that are similarly situated in Mr. Hassan's position --
2 there's not that many -- his level of cooperation seems
3 extraordinary.

4 The sheer numbers, the type of cooperation he has
5 done, the fact that he called from Yemen and said, yes, I
6 will help out, those are very significant different factors
7 than we see in our everyday cooperation cases.

8 So when the government speaks of going from 38
9 years to lower, for me my starting point doesn't come up to
10 38 years, as I know the Court has just ruled, but there are
11 other factors also, but looking at it as a whole, I think
12 it's worthy of a larger departure than what the government
13 is requesting.

14 THE COURT: Anything the government wishes to tell
15 the Court dealing with its motion for a downward departure
16 based on 5K1.1?

17 MR. NARUS: Your Honor, the government has set out
18 its position in what I hope is great detail for the Court to
19 assist it with its determination. Mr. Hassan's cooperation
20 has been sustained, elaborate, and very productive for the
21 United States.

22 THE COURT: You can use the word "extraordinary,"
23 as you did in your papers.

24 MR. NARUS: Extraordinary, Your Honor. He has --
25 but for one decision he made with respect to omitting

1 certain information, it would be what one would hold out as
2 the textbook example of what someone should do if they get
3 in too far in a terrorist group, that there is a way out.

4 And but for his false statements to us over ten
5 weeks, his conduct on that regard was to come in and to meet
6 with the FBI, to agree to testify right away, to be the
7 first one to agree to testify.

8 As we explain in our papers, Your Honor, the
9 timing of the defendant's cooperation was of extraordinary
10 significance to us, to the United States.

11 If I could take us back to January of 2009. At
12 that time -- and the chart that we have submitted as
13 attachment I believe 2 and we have attached another copy to
14 our exhibits today, the chart of the Minnesota travelers to
15 Somalia.

16 In January of 2009 there was something of an
17 epidemic going on in the community. Shirwa Ahmed, number 2
18 on this chart, had detonated a suicide vehicle-borne
19 improvised explosive device in Somalia killing I believe 20
20 to 30. Salah Ahmed and Abdifatah Isse had returned to the
21 United States and were in the United States, both known to
22 the FBI at that time. Mr. Hassan was known to the FBI
23 before he called.

24 THE COURT: You should go back to Mr. Ahmed. The
25 detonation did not kill Ethiopian troops.

1 MR. NARUS: This is true, Your Honor. In fact, it
2 was targeting the United Nations, an Ethiopian government
3 building there in Somalia. But as Mr. Bryden testified, and
4 I couldn't quote his exact words, this suicide bombing had
5 the effect of killing Somalis and particularly Somalis who
6 were not carrying guns or part of the militia, but Somali
7 people who happened to be in the vicinity of these suicide
8 bombings, these five coordinated suicide bombings that
9 Mr. Bryden testified were the work of al-Shabaab.

10 Almost immediately after those bombings, within
11 the next week, seven men left the United States for Somalia
12 and those families came into the FBI and reported their sons
13 missing.

14 So in January of 2009 when the FBI and the United
15 States Department of Justice, the assistant U.S. attorney
16 made contact with Mr. Hassan in Yemen, it was a time of --
17 it was a time when there was a need for a window into what
18 had happened here.

19 And Mr. Hassan, although he didn't open the window
20 or pull up the blinds all the way, to his detriment and to
21 our detriment, he did admit that he had joined a terrorist
22 group, he did admit that he had trained with them, and he
23 implicated himself in this conspiracy. He pointed out some
24 of the people who were involved and he omitted others.

25 But the timing of his cooperation allowed the

1 United States to later arrest Abdifatah Isse. Mr. Hassan
2 entered his guilty plea on February 18th of 2009. The grand
3 jury returned an indictment on Abdifatah Isse and Mr. Salah
4 Ahmed the following day, and about six days later Abdifatah
5 Isse was arrested leaving the airport in Seattle on his way
6 to Tanzania.

7 So Mr. Hassan's timing of entering his guilty plea
8 and agreeing to cooperate and implicating Mr. Isse in this
9 conspiracy and Mr. Ahmed allowed the United States to arrest
10 Mr. Isse as he departed the United States for Africa.

11 Mr. Isse, as evident during the trial, agreed to
12 cooperate and eventually entered his guilty plea in April of
13 2009. Shortly thereafter Salah Ahmed was arrested in July
14 of 2009 here in Minneapolis. He also agreed to cooperate.

15 So the defendant's cooperation started this
16 process and he deserves credit for that. He did so without
17 demanding significant discovery. I believe we turned over
18 some discovery, but very minimal to Ms. Atwal and
19 Mr. Mohring.

20 He agreed to cooperate, he entered his plea under
21 seal, and he agreed to reside at an FBI-furnished facility
22 under very close guard of FBI agents 24 hours a day. He was
23 not allowed to leave without being escorted by FBI agents.

24 But he did that at a time when his presence in the
25 United States was not known and he was able to assist with

1 gathering evidence here in the United States against people
2 in Somalia as well as people in the United States. So the
3 timing of his plea also allowed us to gather evidence
4 against co-conspirators proactively here in the Twin Cities.

5 Ms. Atwal mentioned the false statements. And as
6 we pointed out in our papers, those were troubling and those
7 were particularly troubling because at that period of time
8 the FBI agents and Mr. Hassan, the assistant U.S. attorneys,
9 and Ms. Atwal and Mr. Mohring were all seeing each other on
10 a very regular basis. The agents and Mr. Hassan, of course,
11 saw each other all waking hours.

12 And so at that point in time his omissions of
13 involvement of particular people, particularly the ones in
14 the United States, cost the United States opportunities that
15 could have been there otherwise and, as we pointed out, made
16 it more difficult to call him as a witness without
17 corroboration, which we later obtained from other
18 defendants.

19 Ms. Ahmed [sic] has discussed a number of cases
20 that the United States has charged based off of information
21 provided in part by Mr. Hassan. I will refer the Court to
22 the letter, but I would not dispute Ms. Atwal's
23 characterization that it's substantial and significant and
24 set in motion this process we've discussed here where
25 following the plea of Salah Ahmed, Adarus Ali was approached

1 and agreed to cooperate. Shortly thereafter other
2 defendants were charged, and the other aspects of that have
3 been recounted in the pleading before Your Honor.

4 Mr. Hassan's cooperation also included trial
5 testimony. Your Honor questioned him directly throughout
6 his direct and his cross examination and asked him very
7 pointed questions about his motivation and his change of
8 heart or decision to go to Somalia where he had no
9 indication that that would happen based on his prior
10 conduct.

11 Mr. Hassan deserves credit for testifying in
12 court. Of course that's not easy ever, but I would imagine
13 it's particularly difficult in a case such as this with
14 these charges and against a defendant such as Mr. Mahamud
15 Said Omar.

16 So unless the Court has specific questions with
17 respect to the 5K, I would leave it at that.

18 THE COURT: All right. Anything further for the
19 defense?

20 MS. ATWAL: Just very briefly, Your Honor.

21 Something that the government just touched on was
22 sending a message to other community members. And in this
23 case one of the messages should be if you commit a crime
24 such as this, you will be prosecuted, such as just what
25 happened to Mr. Hassan.

1 But two, if you cooperate and you choose to help
2 the government, all those kids that are still missing and
3 still living in Somalia or around that area, I'm presuming,
4 the message should be given to them if they turn themselves
5 in and if they cooperate to the extent Mr. Kamal -- or
6 Mr. Hassan has, that there is hope for their future, that
7 they're not going to be stuck in prison for 38 years or 30
8 years, that they will be rewarded if they choose to help the
9 United States. And that is something Mr. Hassan did with
10 the assistance of his family.

11 Second thing I wanted to point out was because he
12 was able to give the names of other individuals, those
13 individuals were charged and in turn they turned around and
14 they cooperated also. So he does deserve credit for that
15 also.

16 And finally, when he was a witness, yes, the issue
17 of him lying or leaving out information to the FBI was
18 brought up and he was cross-examined on that at great
19 length. But one of the good things that Mr. Hassan did is
20 during that trial preparation he never minimized that, he
21 never minimized it on the witness stand.

22 But he also was very helpful in his trial
23 preparation and reminded the government about one phone call
24 that was played to the jury where Sharif -- the defendant's
25 name was mentioned and it was something that came up during

1 trial preparation when Mr. Hassan turned to the agents and
2 said, Remember there's that phone call that I made and we
3 know Sharif was in Somalia at the time. That was
4 instrumental.

5 So the government has said that it hurt their
6 case, and I can't speak for their whole investigation. I
7 know Mr. Hassan's testimony was very helpful at the time of
8 the trial. It was helpful in the sense that the defendant
9 was convicted.

10 THE COURT: The Court has reviewed the submission
11 of the government and the submission of defense counsel
12 dealing with the government's motion for a 5K1.1 downward
13 departure based on substantial assistance to the government
14 and the Court will grant that.

15 I need a sidebar. I just want to put something on
16 the record. Sidebar.

17 **(At sidebar.)**

18 THE COURT: I met with the government without your
19 presence for close to two, two and a half hours this morning
20 and quizzed them about every aspect of the cooperation of
21 your client and so I do have, I suspect, more than your
22 knowledge --

23 MS. ATWAL: Yes.

24 THE COURT: -- of what's going on.

25 That will be part of my reduction in his sentence

1 and so I'm asking -- sometimes the Court of Appeals gets
2 prickly about departures and since I can't put all that on
3 the record, so they are going to say we don't know why I
4 made that decision, but I just want to make sure there's a
5 record that I met with the government.

6 And I think you would agree I quizzed you and
7 received as much information as you could give me.

8 MR. NARUS: Yes, Your Honor, the government
9 concurs. And I would just add that I spoke with Ms. Atwal
10 beforehand and advised her of the meeting, and I believe she
11 said that was acceptable to her.

12 MS. ATWAL: Yes. And it's something I did discuss
13 with Mr. Hassan, anticipating that that could happen.
14 Obviously I can't be privy to everything. So we were in
15 agreement with it.

16 THE COURT: All right.

17 MS. ATWAL: Thank you.

18 MR. NARUS: Thank you, Your Honor.

19 **(In open court.)**

20 THE COURT: All right. Ms. Atwal.

21 MS. ATWAL: Your Honor, moving on to reasons as to
22 why a variance should be granted in this case.

23 I don't think it's been any secret how I feel
24 about this case. It's been a third of my career here, four
25 and a half years, and during that time period I've gotten to

1 know Mr. Hassan.

2 I still remember the day he called from Duluth and
3 I thought it was a joke when he said, I'm one of those kids
4 that went to Somalia and I've been in Yemen and I just
5 arrived here with a prosecutor and three agents and we
6 traveled in a desert in a jeep. We've been staying at
7 hotels. I'm in Duluth and they told me I should get a
8 lawyer.

9 And I remember thinking this has got to be some
10 kind of joke because it sounded like something out of a spy
11 thriller. It didn't seem real. But it was real and this is
12 why we're here today.

13 And the more I got to know Mr. Hassan and
14 particularly his family, the behavior was very surprising.
15 When I first met his father, as was testified at trial, he's
16 a very scarey individual that demands nothing but the best
17 from his children.

18 THE COURT: I would like to hear from him before
19 the sentencing.

20 MS. ATWAL: Unfortunately, Your Honor, as stated
21 in the PSR, soon after Kamal was scheduled to be released
22 back in September of 2011, things went terribly wrong at
23 home. His parents separated and his father has left the
24 country and now lives in Egypt.

25 But his frustration over the case and his words to

1 Kamal were work with the FBI and they will take care of you.
2 He demanded answers from the mosque. He demanded answers
3 from people in his community.

4 And I think more than anything that's what Kamal
5 feels horrible about. As he said in his letter to the
6 Court, he doesn't know if it was all the stress that was
7 going on.

8 Because in his family everybody contributes to the
9 household. As the eldest boy out of eight kids, it was his
10 responsibility to bring home the paycheck and make sure mom
11 and dad got the money. His parents at the time owned a
12 restaurant, which after Mr. Hassan left for Somalia they
13 lost the restaurant, they lost the family home.

14 He was influenced in a lot of ways and it doesn't
15 rise to the level of coercion and duress for a traditional
16 departure, but I ask the Court to consider it when
17 considering a variance.

18 He had heard things around the city. We all know
19 of the protests that were going on even right outside this
20 courtroom -- outside the courthouse and the Metrodome and
21 Peavey Park where there was such things chanted as the
22 Islamic courts are okay or the Ethiopians need to get out.
23 It was all that rhetoric that was put into his head. People
24 were telling him Ethiopians are raping women, they're
25 burning down houses, and they need to get out of Somalia.

1 And Mr. Hassan, being a 22-year-old, took it to
2 heart and suddenly when he was being told by the
3 facilitators it's your duty, you need to go back to your
4 native land and fight, he bought into it.

5 And I believe as one community member told the
6 probation officer, they wished these kids had turned to
7 them, they wished that they had turned to them and said, Is
8 this the right thing? Are we supposed to be doing this?

9 Instead he got caught up in this whole
10 nationalism; I am going to go back and fight for my native
11 country. And once he got there, he learned that he was
12 lied to.

13 Recently while at the jail he's now read the Quran
14 in English, which he understands, and he tells me all the
15 stuff they were telling me that was in the Quran, that's not
16 true, it is not true.

17 And when he tried to leave, when he realized how
18 bad he was in trouble in Somalia, when he tried to leave he
19 wasn't allowed to leave. His passport was taken away. When
20 Mr. Isse and Mr. Ahmed left, the camp was put on lockdown.
21 There was armed guards. He couldn't leave.

22 He tried everything he could and he knew after the
23 ambush that he was going to be rewarded and his reward was
24 you don't have to go around with guards. And the first
25 opportunity he got he was able to make it to Mogadishu, make

1 phone calls and get out of the country. And we all know
2 what happens afterwards. He's able to start working with
3 the government.

4 He also was warned with threats of the videos, the
5 videos that he saw, like if you leave al-Shabaab this is
6 what will happen to you. When Shirwa had abandoned the camp
7 and tried to come back, he saw what happened to Shirwa. He
8 was scared.

9 His actions were driven by that of what he was
10 told, that it was his duty to fight the Ethiopians. As he
11 has said over and over again, him going there was not
12 anti-American. He didn't want it to be hateful to
13 Westerners. The speech that he reads in that video, as he
14 states, was written by Farouk, one of the individuals that's
15 on the FBI's Most Wanted.

16 Why should the Court believe that? Why should the
17 Court trust that statement that it was written for him? The
18 same reason why he left al-Shabaab and the same reason why
19 he asked for their help, he means it.

20 Back when he left in 2007 al-Shabaab wasn't all
21 over YouTube, they weren't in the social media group. They
22 didn't get that footing until almost a year later where they
23 all of a sudden started advertising.

24 And he left al-Shabaab in August of 2008, that
25 fall of 2008. We know by January of 2010 al-Shabaab was

1 making connections with al-Qaeda, two years after he had
2 left al-Shabaab.

3 And as Matthew Bryden testified, there were many
4 people in Somalia that sided with al-Shabaab but didn't buy
5 into this religious message. They didn't buy into there has
6 to be sharia law. They were doing it as a sense of
7 nationalism. And that's where Mr. Hassan came from, that he
8 was told it was his duty, he was encouraged to do it. He
9 was hearing what was going on in his community and he went.

10 As he told the Court and told the jurors, it's one
11 of the biggest regrets he ever made, not only for going over
12 there and lying to his parents, not only because he was
13 prosecuted for it, not only because he faces a hefty prison
14 sentence, but because of the way it makes him look and the
15 way it makes his community look.

16 We've used the word "terrorism" over and over
17 again during these proceedings and that is a hard label for
18 this young man to wear. It's a hard label because that's
19 not the way he sees himself.

20 He has never once denied the indictments in this
21 case. He's never denied his role in this offense. But that
22 word is thrown around and it's used quite a bit, but that's
23 not the way he sees himself and he's hoping, just hoping
24 just a little bit that that can be chipped away by his
25 cooperation that he has shown to the government.

1 He's a young man that has a very strong family.
2 The Court may recall, again, at the detention hearing when
3 the family stood up and said they will stand by him and make
4 sure he does right.

5 And his poor younger brother, the one who used the
6 Internet, took the laptop and used the Internet at Macy's,
7 that kid is never going to live it down. His brother has
8 told me over and over again how he felt. But I think the
9 person who felt the most guilt was Kamal because he said he
10 never should have put his brother in that position.

11 So he has sat in jail, sat in jail for over four
12 years. And we all talk about hard time and usually when I
13 get up here and argue about hard time, I'm talking about a
14 year or so. This is four years. Seven months with the FBI,
15 again, under close guard, but four years in a jail cell and
16 he is in special housing, so he is usually housed with
17 people with serious sex offenses.

18 And not once has he complained, not once has he
19 complained to the agents, not once has he complained to the
20 government. He keeps his nose down and tries to do the best
21 that he can.

22 He's outlined to the Court what he plans to do
23 with his future and I want to read to the Court one of his
24 statements that he wrote that I thought were pretty
25 important.

1 In his letter to the Court he wrote, (As read) "I
2 don't know what my sentence will be on Monday. I don't want
3 to go to prison, but that's not my choice. No matter what
4 my sentence will be, I will keep my word to you. I will
5 forever continue to prove I'm a good citizen by continuing
6 to cooperate and helping. I will work on making up for all
7 my mistakes and the choices that hurt my family. I will
8 never be able to tell you or the government how sorry I am.
9 I left al-Shabaab. I left and want nothing more to do with
10 them. Kamal Hassan." Those words aren't just words on
11 paper. It's what he feels in his heart and in his head.

12 Telling this to you, Your Honor, is one thing.
13 For him to tell this to his family so they understand how
14 truly sorry he is -- he's never going to forgive himself for
15 what's happened to his parents' marriage.

16 And his parents can say the problems were always
17 there, but for him he does the math. When he left, the
18 family finances went to trying to find him. They lost
19 everything. And with eight mouths to feed, that becomes
20 tough.

21 Now he has a wife who came with him from Yemen and
22 while he was living in the safe house his wife was pregnant.
23 He had got taken into custody and his wife had the baby.
24 His wife has been living with in-laws that she has just met
25 without her husband.

1 And Zaynab, who sits in the back -- I don't know
2 if she went out with the baby -- she barely speaks English.
3 All she knows is that her husband had joined al-Shabaab.
4 And in her letter to the Court, again, she talks about the
5 great disappointment when she heard who Kamal had aligned
6 himself with, but she stands by her husband because she
7 knows that he's truly remorseful for his actions.

8 Taking into consideration who he was, Your Honor,
9 in that period of time when he was 22, now he's 28, he's a
10 father, he is a husband, and he is somebody that is
11 constantly trying to prove to everybody here that he has
12 changed.

13 And people say, you know, terrorists won't change.
14 At the very beginning of the government's argument they
15 talked about that one of the reasons for this enhancement is
16 to prevent recidivism, to stop people from doing terrorist
17 acts in the future. Hasn't Kamal Hassan shown that he is
18 not likely to do that, shown it by leaving a terrorist
19 organization, shown that by cooperating with the government,
20 shown that by reaching out to the government? Standing
21 before you is not somebody that's dangerous.

22 Let's send the message to the community you will
23 be punished if you do things like Kamal did. Four and a
24 half years in custody is a long time, and the Court holds a
25 big hammer. If the Court wants to give him a lifetime

1 supervision, the Court can absolutely do that, control all
2 of his movement, continue his cooperation with the
3 government.

4 I'm asking the Court for a significant departure
5 based on the cooperation, but also to take into
6 consideration everything I've just said when considering a
7 variance. Four and a half years in custody and a lifetime
8 of supervision serves as a deterrent, protects the public,
9 and all the other sentencing factors that 3553(a) talks
10 about that's taken into consideration.

11 Thank you.

12 MR. NARUS: If I could have Exhibit 1. Your
13 Honor, I would just like to take us back through the
14 defendant's crime as Your Honor considers the sentence to
15 impose under these circumstances and along the way I intend
16 to address several of Ms. Atwal's arguments.

17 In the fall of 2007, starting in Ramadan, the
18 defendant learned of an opportunity to go to Somalia. He
19 learned of it, as he testified, from Salah Ahmed. And he
20 had an interest in going to Somalia for a number of reasons.
21 His fiancée was there, as he testified. He felt a desire to
22 come to the duty -- or a duty to come to the defense of the
23 Somali people who he had believed were being subjected to
24 the will of the Ethiopian military. He said he felt a
25 connection with the other men involved in it and he said he

1 felt a sense of adventure. In his letter to Your Honor he
2 also pointed out that he was going to a different country
3 and being on a plane excited him. In very candid remarks to
4 Your Honor he pointed out his reasons for joining this
5 conspiracy.

6 He was given opportunities. Mr. Hassan was
7 unsophisticated, I would submit, and not capable of booking
8 his own flight at that time. Perhaps he was, but he didn't.
9 He had to have those arrangements made for him. He didn't
10 know anybody affiliated with this group in Somalia, but
11 members of this group did.

12 And Mr. Hassan joined this group and I would
13 submit to Your Honor did so and made a very terrible
14 mistake, and I think he has laid that out for Your Honor.
15 But he made that mistake on his own. He wasn't coerced into
16 making that mistake and it wasn't under duress. He could
17 have had motivations that encouraged him to make a mistake
18 he wouldn't ordinarily make, patriotic motivations and
19 religious motivations, but he made this mistake of his own
20 free will and after he made that mistake he found some
21 excitement or some adventure in that decision.

22 And I think that's important for two reasons.
23 One, he wasn't -- his will was not overborne, he wasn't
24 pressured mercilessly to make this trip to Somalia. He made
25 the decision to make it.

1 And I think that cuts both ways. He accepts
2 responsibility for that, so he shouldn't get a lesser
3 sentence because of some imperfect coercion or imperfect
4 duress, but I think under the government's view of this it
5 indicates a less likelihood that he would be subject to this
6 sort of pressure and cave in again.

7 In other words, he made this decision on his own,
8 of his own free will, recognizes the error of that decision,
9 and has now agreed to cooperate with the United States for
10 his own motivation, which is to lower his sentence, but also
11 to get the story out to the community and help the United
12 States investigate these crimes.

13 In the fall of 2007 when these men began working
14 on this conspiracy, when they began coming up with these
15 ideas on going to Somalia, they didn't consult the elders at
16 the mosque, they didn't consult their parents.

17 They were not similar to men joining the military,
18 the United States military. It was not a celebration.
19 These activities were taken in secret. They were taken
20 without consulting people who would know better, such as
21 their parents and senior members of the mosque. These men
22 made this decision in secret and then decided to leave.

23 If we could go to Exhibit 2, Ms. Bell. They met
24 at restaurants, one of which is the AINU Shams, and there
25 they spoke with someone, Samatar or Said Fidhin, who eased

1 their immersion into Somalia. He had the hotels in northern
2 Somalia in Hargeisa and then he welcomed them into Mogadishu
3 and from Mogadishu sent them to the safe house in Marka.

4 At this time Mr. Hassan sought to go see his
5 fiancée in Mogadishu and made a trip up there, but wasn't
6 permitted to see his fiancée. At the same time his father,
7 who truly deserves the credit for, in the government's
8 opinion, Mr. Hassan being here today, his father influenced
9 Mr. Hassan, encouraged him to come to the FBI, and put the
10 FBI in contact with Mr. Hassan.

11 Mr. Hassan went to Yemen, where his fiancée or
12 perhaps wife at the time had already relocated. Mr. Hassan
13 followed her to Yemen, where Mr. Hassan's family met him and
14 his fiancée and his fiancée's sister.

15 When the men left for Somalia they used
16 subterfuge. They used a false itinerary. They not only
17 didn't tell their parents, they affirmatively lied to their
18 parents.

19 And Mr. Hassan in particular, who had the family
20 support that Ms. Atwal mentions, knew that he wasn't going
21 to get his passport and leave the country without convincing
22 his parents that he had a legitimate reason for leaving the
23 community, leaving the Twin Cities.

24 And with the help of co-conspirators, who will be
25 before Your Honor later this week, he was able to obtain a

1 false itinerary. If we could bring up the false itinerary.
2 This was used for the parents, to convince the parents to
3 allow their children to go or at least Mr. Hassan's family
4 to go.

5 And, Your Honor, Mr. Hassan's mother has written a
6 letter where she conveys the guilt she feels for being
7 convinced by this, but this letter was a letter from a
8 travel agency, a legitimate document. Of course no way
9 anyone could tell that it was not legitimate. But it was
10 what was used to effect this conspiracy to go over to
11 Somalia, to leave the United States.

12 From there Mr. Hassan met up with his cohorts, who
13 are pictured on Government's Exhibit 17 from the trial, and
14 all seven of them reunited at the safe house in Marka. They
15 eventually met there. They received some training in the
16 house on AK-47s.

17 And eventually they left and went down to Baraawe,
18 where they stayed at a second safe house. Baraawe, as we
19 can see on Government's Exhibit 158 from trial, is to the
20 southwest of Marka.

21 The defendant stayed there, where he interacted
22 with Omar Hammami and other terrorists or men charged with
23 terrorism offenses by the United States. And at present men
24 such as Hammami who have a \$5 million award offered for
25 their arrest and conviction by the State Department, it was

1 men such as these that Mr. Hassan and his cohorts
2 encountered when they got to Baraawe.

3 In Baraawe they were issued AK-47s. The men had
4 raised the money to gather -- or gathered the money to pay
5 for these AK-47s by calling back to the United States, to
6 young women here in the United States and having those women
7 send money over to the men.

8 And during this period of time, I believe as
9 Mr. Ahmed testified before Your Honor, their time in Marka
10 and Baraawe was not marked by unpleasantness or harsh
11 tactics or harsh training. I believe one of the witnesses
12 in the trial said that they were allowed to go to the beach,
13 they were allowed to go out in the community.

14 And the government would submit that during this
15 period of time any remorse that these men had made about
16 their decision wasn't terribly evident because they were
17 enjoying themselves. That adventure they were looking for
18 existed.

19 From there Mr. Hassan and the others went down to
20 Kamsuma, a training camp outside of the city or village of
21 Kamsuma. When they arrived there two of Mr. Hassan's
22 colleagues, Mr. Ahmed and Mr. Isse, returned to the United
23 States. They became disenchanted both with the building of
24 the camp and, as they say, with al-Shabaab's ideology.

25 Mr. Hassan did not make the same decision. He

1 stayed through the camp, had no -- I have spent a good deal
2 of time with Mr. Hassan since 2009 and with Ms. Atwal. I
3 have no doubt he regrets that decision, but the decision he
4 made was to stay at the camp and to complete the camp and
5 graduate.

6 During that camp a video was created. If we could
7 go to Exhibit 6. We're not going to play the video. We
8 have admitted a copy for Your Honor and for the record. But
9 at that camp were men such as Mukhtar Robow, pictured on the
10 left here, and, as the defendant candidly testified, Saleh
11 Nabhan on the right, Saleh Nabhan in al-Qaeda in east
12 Africa, a trainer who was at Kamsuma training the young men
13 from Minnesota, of which I believe there were six there at
14 the time since Khalid Abshir developed malaria or some
15 sickness and had not traveled all the way to the camp.

16 During the camp Mr. Hassan has explained before
17 Your Honor during his testimony that members of the camp,
18 the leaders of the camp blame the United States for the
19 Ethiopian invasion, they blame the United States for the
20 death of Aden Ayrow in May of 2008.

21 Mr. Hassan may not have shared those views, we're
22 not suggesting he did, but the people who were in control of
23 men such as Mr. Hassan clearly had a hostility and an anger
24 toward the United States and attributed the Ethiopian
25 invasion to the United States.

1 If we could go to the next slide. During this --

2 THE COURT: Do you have this on tape?

3 MR. NARUS: Yes, sir.

4 THE COURT: Play it.

5 MR. NARUS: We have the disk we admitted as an
6 exhibit.

7 THE COURT: It's probably Number 8 -- Number 9.
8 No, Number 8. I don't know. Give both of them to them.
9 They will know.

10 (Pause.)

11 THE COURT: Can they play it on ours?

12 THE CLERK: No. It's formatted for a computer.

13 MR. NARUS: Your Honor, may I approach and get
14 some water?

15 THE COURT: You may.

16 MR. NARUS: Your Honor, before we play that, just
17 for the record we are showing the portion of the video of
18 the Kamsuma training camp referred to as "No Peace Without
19 Islam" and we are at about time stamp 9:55, I believe is
20 where Mr. Hassan's remarks begin.

21 (Video recording played.)

22 MR. NARUS: Your Honor, whether or not Mr. Hassan
23 came up with those words or not, we're not suggesting he
24 didn't. Let me say that again. We're not saying we
25 disbelieve him.

1 Regardless, though, the point is that this video
2 is now on YouTube and it will be. This is an al-Shabaab
3 propaganda video and a portion of the defendant's offense is
4 providing himself at al-Shabaab's disposal.

5 And what happens there is not only does one end up
6 in an ambush, but one ends up, whether one has written the
7 words or not, as an actor in an al-Shabaab propaganda video
8 espousing their ideology back to the community in English
9 and encouraging others to come to Somalia, which is what
10 happens here.

11 Mr. Hassan says that every time he sees this video
12 he feels sick to his stomach. And I can tell Your Honor
13 that the same reaction has been conveyed to us when we've
14 watched this video with him in trial preparation sessions, a
15 distaste for it from Mr. Hassan, and we've watched it many
16 times going through it to find out who is involved and who
17 is behind those face guards.

18 Following this camp the object of the conspiracy,
19 what had begun here at AINU SHAMS, at the Abubakar
20 AS-SADDIQUE mosque here in the Twin Cities, was realized in
21 Somalia. Four men from Minnesota, Mr. Hassan, Shirwa Ahmed,
22 DAHIR GURE, and Ahmed Ali Omar, participated in an ambush or
23 an al-Shabaab attack of Ethiopian soldiers who were en route
24 to Somalia. They were coming into Somalia I believe near
25 Bardale, a city on the map that the government has admitted

1 earlier.

2 The ambush video was videotaped. The ambush
3 attack was videotaped by al-Shabaab and Mr. Hassan has
4 reported that that was Jihad Mostafa, another senior figure
5 in al-Shabaab, and Omar Hammami led this ambush. At least
6 two members of al-Shabaab died during this ambush and it's
7 unclear whether Ethiopian soldiers were killed.

8 The point is, though, that men here in Minneapolis
9 who -- in the Twin Cities, United States citizens, such as
10 Mr. Hassan, decided to go to Somalia because they disagreed
11 with the Ethiopians' presence there. They did so secretly
12 and covertly without consulting the elders or the senior
13 figures in the mosque or without consulting their parents.

14 And that plan, from restaurants here in the Twin
15 Cities, reached its objective in the form of an attack in
16 Somalia on the Ethiopian military that, as Mr. Bryden
17 testified, was there at the invitation of the Transitional
18 Federal Government attempting to bring stability to Somalia,
19 a country desperately in need of such stability.

20 That the men didn't know they would be with
21 al-Shabaab or that al-Shabaab would be a designated foreign
22 terrorist organization doesn't change the fact that once
23 Mr. Hassan and the others got there, they were on full
24 notice about who they were joining. This was explained to
25 them very early in the process, in December and in January.

1 They were lectured by senior members. Sheikh Fuad came to
2 the house; Amo, the trainer.

3 Al-Shabaab, it must be remembered, is not a group
4 unknown to al-Qaeda. There are statements from 2007 from
5 Osama bin Laden and Zawahiri extolling the activities of
6 these Islamic groups in Somalia.

7 And since then al-Shabaab has emerged and is now
8 formally affiliated with al-Qaeda. So these groups are
9 affiliated with people who have attacked the United States
10 and continue to seek to attack the United States.

11 And this is the danger that men such as Mr. Hassan
12 when they decide here in the United States to take
13 international matters into their own hands and to leave and
14 to take up arms against a foreign government, falling in
15 with groups like al-Shabaab and becoming foot soldiers for
16 al-Shabaab is exactly the danger that the law is designed to
17 prevent.

18 It's exactly the reason why it is against the law
19 to leave the United States and go conspire to kill overseas,
20 exactly the reason why you can't provide yourself to some
21 group in Somalia called al-Shabaab that's designated as a
22 foreign terrorist organization.

23 If you yourself don't know how they threaten the
24 United States or you consider their activities to be Somali
25 centric, the decision by the United States government has

1 been made based on affiliations with al-Qaeda that
2 al-Shabaab is a foreign terrorist organization. Mr. Bryden
3 recounted a litany of atrocities they have committed against
4 civilians, the Somali people, believing that that will
5 effect their message.

6 So, Your Honor, when Mr. Hassan and the others
7 left in the fall of 2007 they didn't appreciate this, or at
8 least Mr. Hassan and I don't believe Mr. Isse or Mr. Ahmed
9 appreciated the group that they were getting involved in.
10 By early 2008 it had been explained to them who this group
11 was and what their mission included. By the time of the
12 ambush Mr. Hassan understood that.

13 Mr. Hassan to his credit, as I mentioned a moment
14 ago, did leave that group, he did go to Yemen. And since
15 January of 2009 he has tried to assist the United States and
16 has done what has been asked of him with the exception of
17 that slight -- I shouldn't say "slight" -- with the
18 exception of ten weeks when he omitted aspects of the story,
19 believing that he could recount and admit his guilt without
20 implicating certain people.

21 Your Honor, in many ways this case illustrates the
22 dangers of American citizens leaving the United States to go
23 train in foreign countries with foreign terrorist
24 organizations, but it also illustrates that even under those
25 circumstances one can make the decision to return and to

1 cooperate with the United States.

2 And Mr. Hassan essentially illustrates both
3 points. So while he did make this mistake, the government
4 does make its motion, the United States and the government
5 submits the Court cannot overlook his offenses. We can't
6 forget what he has -- the offenses he's committed and that
7 is joining a foreign terrorist organization in a foreign
8 country and acting at its disposal to espouse its ideology,
9 to take up arms against the Ethiopian military, and to
10 contribute toward the destabilization of Somalia by
11 combatting the Transitional Federal Government.

12 Unless Your Honor has further questions, the
13 United States would submit.

14 THE COURT: The defendant's motions are denied.
15 Do you wish to be heard before sentencing?

16 MS. ATWAL: One other thing I want to add. We've
17 been left with that video, the image of Kamal speaking to a
18 camera and a speech that was given to him. So how do we
19 know that that's not something that's going to happen again?

20 He left that group and publicly yet again he sat
21 in that chair and told the world about this organization.
22 And he didn't just speak about some little folks that were
23 involved in it. He talked about the big folks involved in
24 it, the leaders of al-Shabaab.

25 And I recall in a phone call that he made to

1 Somalia when he was trying to help the FBI locate other
2 missing men that he was warned that he better not be
3 cooperating with the government, he better not be working
4 with the FBI. And he ignored that warning. Even though he
5 knows what could happen, he has seen the videos where people
6 were beheaded or executed, he continued his cooperation.

7 And it's because of those reasons that that Kamal
8 Hassan from February of 2008, when he was 23 years old, is
9 not the same Kamal Hassan who is standing before this Court
10 as a 28-year-old and somebody who has left al-Shabaab.

11 When he left here, Your Honor, he was told it was
12 his duty. And I know I have repeated that theme all
13 throughout my position pleading, I have repeated it here
14 today, but that is the stronghold that they pushed in front
15 of these kids. And to verify that, they had all these
16 protests coming along around the cities and around the world
17 saying Ethiopia was committing these humanitarian rights
18 [sic].

19 And the Court is right and Mr. Narus is right that
20 we now know al-Shabaab was doing the same thing, but there
21 are verifiable reports that Ethiopian troops were doing this
22 too.

23 So when they went to his whole psyche of this is
24 nationalism, you need to do this for your country, it
25 worked.

1 He did want to leave when Salah Ahmed left. They
2 had discussions about leaving, but as I stated in my
3 position paper, Mr. Ahmed when -- he took the first chance
4 he could leave and Kamal wasn't there and he got out when he
5 could.

6 And what do we know happened right afterwards?
7 Everything was put on lockdown, armed guards around the
8 camp, cell phones taken away. His communication with the
9 outside world was cut off.

10 He wanted to leave well before the ambush. After
11 the ambush is when he was able to leave and he took the
12 opportunity, got ahold of his dad and was able to make that
13 run. And I say "run" because he did escape from al-Shabaab,
14 and that is why we know he won't go back to this.

15 Not only is it in this courtroom or in this
16 country, but remind the Court that he has cooperated with
17 international governments, too, where he has signed sworn
18 statements about what al-Shabaab is about and their
19 activities. And that someday, depending on the
20 prosecutions, will be made public.

21 That's why he's never going to go back to it,
22 right there. He has no reason to. He left for a reason.
23 He's cooperating for that reason. And I ask the Court to
24 keep that in mind.

25 THE COURT: Mr. Hassan, would you please move to

1 the microphone. This is your opportunity to speak to me.
2 You have an absolute right to talk to me, tell me anything
3 that you want to tell me about yourself, about the offenses
4 that you have pled guilty to, or anything else that you
5 think I should know before I sentence you. Please talk to
6 me.

7 THE DEFENDANT: Thank you, Your Honor, for this
8 opportunity. I have been waiting for this for the past four
9 and a half years. And I'm very nervous, so I'm sorry if
10 my --

11 THE COURT: Take your time.

12 THE DEFENDANT: -- voice is breaking.

13 THE COURT: Take your time.

14 THE DEFENDANT: Your Honor, I sat in that witness
15 chair for three days testifying for the U.S. government and
16 telling everybody what I did. I helped al-Shabaab and I
17 lied to the U.S. government, Your Honor.

18 I can't take back what I did, but I can show you
19 and my family, the government, and the Somali community that
20 I can do better, that I'm sorry for what I did, and I will
21 continue showing you, Your Honor, that I'm a good citizen.
22 I hope my cooperation shows that and I hope my behavior in
23 the past four and a half years shows that.

24 One of the things that people ask me about my case
25 is, Your Honor, why are you being charged for something that

1 happened in a different country. But to me, Your Honor, it
2 doesn't matter because I know what I did was wrong and
3 illegal and I take full responsibility for my actions and my
4 choices in 2007 and 2008.

5 And I'm sorry to those who I have hurt. Your
6 Honor, my actions have deeply impacted my family. Your
7 Honor, when I left my family lost their house and their
8 restaurant. When I was here I was a big help to them
9 financially, and I couldn't be here to help them when they
10 were going through that.

11 My mom, who is here today, Your Honor, she -- her
12 health deteriorated. She started losing her hair, Your
13 Honor. Her blood pressure was going up. And she was going
14 through all of that, Your Honor, because of me, because of
15 my actions and what I did. And I can never forgive myself
16 for putting her through that.

17 Your Honor, my family spent a lot of money looking
18 for me. My mom and dad took turns traveling to Yemen so
19 they could be close to me in case I reached out to them.
20 Your Honor, I put a lot of stress on my family. My brothers
21 and my sister were worried sick about me. They didn't know
22 where I was. They always looked up to me and I let them
23 down, Your Honor, by making this choice.

24 By going to Somalia I let my family down, I let my
25 country down, and I let my community down. Your Honor,

1 despite all of that, in spite of everything that I did and
2 what happened, my family, they still stood by my side and
3 they still supported me.

4 My parents got separated, Your Honor, and -- which
5 is very painful because I blame myself. I know if I had
6 never left that my mom and dad would still be together
7 today.

8 And I hope my family knows how much I love them
9 and how much I appreciate everything they have done for me,
10 Your Honor. They put their life on hold these past six
11 years that this whole thing was going on and they are taking
12 care of my wife and my son as we speak today, Your Honor.

13 Your Honor, my wife lives with my family. She --
14 when she gave birth to our son I was in a jail cell in
15 Ramsey County, Your Honor, and I couldn't be there. I
16 couldn't witness the birth of my first child, Your Honor,
17 because of my actions, because of what I did. I couldn't be
18 in that delivery room to hold my wife's hand and support her
19 and that hurt me deeply, Your Honor, and it also hurt my
20 family.

21 I missed the first three years of my son's life.
22 He's three years old now, Your Honor. I missed his first
23 words. I missed his first step, Your Honor. I missed a lot
24 of important things that a father should not miss. My
25 father never missed a day of my life. I failed my family,

1 Your Honor, for putting them through this.

2 Your Honor, I don't want to miss any more of my
3 son's life. I want to be part of his life, Your Honor. I
4 want to be there for him. And I would like to be given the
5 opportunity to be with my family, Your Honor, so I can
6 support them and help them like they have helped me.

7 Your Honor, my actions have also impacted the
8 Somali community, Your Honor. I think some of them are here
9 today. Your Honor, the Somali people in Minneapolis are
10 hardworking people, peace-loving people, Your Honor. They
11 left Somalia just so they can have peace and security for
12 their families, Your Honor, and I believe that my action has
13 damaged their image. Your Honor, I attracted negative media
14 attention to the community.

15 And I hope they know how sorry I am, Your Honor,
16 and it was never my intention to do that. I hope my
17 cooperation with the U.S. government has repaired that image
18 and I hope my testimony have answered some of the questions
19 that they had, Your Honor.

20 Your Honor, my actions have also impacted the
21 United States for helping al-Shabaab, Your Honor. Your
22 Honor, America has done so much for my family and I. They
23 helped us when we desperately needed help. They gave us
24 food, Your Honor. They gave us shelter and they took us
25 away from poverty, Your Honor, and brought us to America.

1 And we had so many opportunities here. I went to school. I
2 got financial aid. Your Honor, all my brothers attended
3 college. And me going overseas I think was a slap to the
4 U.S., to the United States of America, Your Honor.

5 And one of the reasons why I left al-Shabaab, Your
6 Honor, is because they had anti-American views. They didn't
7 like the West in general. And I didn't want to be part of
8 any group, Your Honor, that had views like that and that's
9 why I ran away.

10 And I want the American people to know, Your
11 Honor, that I'm very sorry for what I did and I also want
12 them to know that I no longer help or support al-Shabaab or
13 any group like them.

14 Your Honor, I don't know what you're going to do
15 today, I don't know what my sentencing will be, but I can
16 promise you one thing, Your Honor, I will keep my word to
17 you. No matter what happens, I will keep my word, I will
18 keep working hard, I will keep cooperating and helping the
19 United States government.

20 Your Honor, I will work hard for my family. I
21 will go to school or get a job, do whatever it takes to
22 support my family, Your Honor, because God knows how much
23 they helped me through this whole mess.

24 Your Honor, I hope my words mean something to you,
25 I hope my letters mean something because I can't express to

1 you enough how sorry I am about everything I did.

2 Thank you.

3 (Pause.)

4 THE COURT: Well, I heard a lot of sorries and, as
5 you well know, I grilled you on the stand when you were
6 testifying and your talk here has reared that ugly head in
7 my mind that I've seen so often with these cases, is that we
8 have people that are very, very bright and can be very, very
9 devious.

10 You deceived your father, who was a very strong
11 man in his community and was very strong in your household
12 and was trying to make sure that you were doing the right
13 thing.

14 You graduated from Wayzata High School and you
15 went on to college, so you're intelligent. You're
16 articulate here. You were able to within a very short time
17 come up with a plan to deceive your father, not to go down
18 to Cancun and drink and carouse around and be with your
19 buddies, but go to essentially a foreign land for you since
20 you had not been there since you were a baby. You didn't
21 know the country.

22 I grilled you at your trial to see whether or not
23 your father talked about hatred of Ethiopians and the wars
24 that the Ethiopians have fought with the Somalians, and you
25 said no. You had no history of that. There was no hatred

1 in your family towards Ethiopia. But within a microsecond
2 of your life you went on an adventure to hold an AK-47. You
3 could have gone to the store and bought one and gone to the
4 gun range.

5 There's no way that you can convince me that you
6 getting on a plane to go to Somalia that you didn't know if
7 you were going to engage in fighting with the Ethiopians,
8 that that meant violence and dying.

9 I asked you on the stand whether or not you
10 understood that and whether or not you had picked up a gun
11 while you were here in the United States, whether or not you
12 had any training with a gun, you ever shot anybody, were you
13 involved in any of the Somali gangs that have ravaged your
14 community; and you said no.

15 I asked you if you knew the Quran, and you said
16 your family wasn't very religious and essentially you hadn't
17 even read the Quran.

18 But I have a young man in front of me that went to
19 Somalia, lied to his parents, stayed in a safe house where
20 people were doing unimaginable things to other Somalis. You
21 went to a training camp. You built the training camp.

22 You even had two people from Minnesota that acted
23 like Minnesotans and said this is too hard of work, I want
24 to go back home and play video games leave while you stayed.
25 You stayed and you had the opportunity to meet the more

1 higher-ups in al-Shabaab. You had training on how to shoot
2 an AK-47. You had training about how to go about an ambush.
3 When you had the training to have an ambush, nothing in your
4 body said, My God, what am I doing? I'm going to get killed
5 or I might kill somebody.

6 You've told the government that you went off on
7 this trek to ambush the Ethiopians and you laid in the dirt
8 and you didn't fire a gun. But I don't believe it. I'll
9 never believe that.

10 Because if you said that you had fired a gun, you
11 know exactly what that would do. That would dig your hole
12 deeper and deeper, just like you kept from the government
13 for a long period of time that you were even involved in an
14 ambush because you knew that if you told them that you had
15 trained and that you had a gun and that you practiced
16 shooting it, that you were more involved than you wanted
17 them to know.

18 Now, I know this case backwards and forwards. All
19 of a sudden you're locked up. You go on a bushwhacking
20 expedition to kill some Ethiopians. You didn't go to shake
21 their hands or break bread with them or talk to them about
22 going back to Ethiopia. You had guns. You were going to
23 shoot them.

24 You had a big weapon that misfired, it couldn't
25 work, and you had to retreat. And you got back to the camp

1 and all of a sudden everyone is happy and so you get to
2 leave, you get your freedom.

3 Now, to me, if it was a disaster and things didn't
4 work out and the foot soldiers didn't do the things they
5 were supposed to do, it would seem like the army would make
6 you do double duty and double down. But you're telling me
7 and you've told the government and the government believes,
8 but I do not believe, that there was joy and a celebration.

9 You destroyed your family's life, and that's what
10 you talk about, but that doesn't measure up to what you did.
11 It's not like you are a person of mental disability that you
12 can't think straight. You deceived your family, who knows
13 you the best, and that takes something.

14 And then you deceived the FBI. It wasn't a day.
15 It wasn't an hour. It was weeks that you kept the story
16 going, not sweating, not being able to not sleep in fear of
17 being caught in your lie, but being housed in a hotel where
18 you had conjugal visits with your wife.

19 And everyone talks about you being mature, but
20 you're not mature. You never thought about not bringing a
21 child into this world because you know that you were going
22 to prison for a period of time. You didn't care about your
23 wife. Because if you were in prison, who was going to take
24 care of her and who was going to take care of the child?

25 So let's get down to it. I don't know you, the

1 government doesn't know you, your family doesn't know you,
2 and certainly this government doesn't know you.

3 Now, I am put in this position of -- it's the
4 position that we have in our sentencing laws. You're the
5 first one to come forward. You're the first one to break
6 open the door for the government so they could see what was
7 happening, because no one was talking, no one knew because
8 it was secret, what was happening to these young individuals
9 going off to Somalia. So you've bought time off your
10 456-month sentence.

11 And why aren't you lying to me? I have no indicia
12 that you're not. I had that video shown for a reason. You
13 convinced the FBI and the government that someone wrote
14 those words for you. If they did, you didn't tell us how
15 long you practiced those words and how many takes was done
16 on that tape.

17 (Discussion off the record between
18 the defendant and Ms. Atwal.)

19 THE COURT: It sounds like there were, so why
20 don't you tell me.

21 THE DEFENDANT: Your Honor, that -- there's many
22 things that you have said, Your Honor. For example, you
23 said that you don't believe that I didn't fire my weapon.
24 Your Honor, I did not fire my weapon.

25 THE COURT: We could spend all day on that.

1 You're not going to convince me otherwise.

2 THE DEFENDANT: Okay. You said when Salah and
3 Abdifatah left. I didn't know about the plan they made,
4 Your Honor. They left and as they were leaving I found out
5 that -- Salah told me he is going to the doctor and
6 Abdifatah said that he is going to go to a family member,
7 that they got permission. Your Honor, I didn't know they
8 weren't coming back. I had no idea of their plan. And had
9 they included me, Your Honor, I would have went with them.

10 THE COURT: There may have been a reason why they
11 didn't include you, but move on.

12 THE DEFENDANT: And the speech, Your Honor, it was
13 written for me by Farouk, one of the leaders of the camp.
14 One of the reasons they picked me, they said that they
15 needed someone from the United States, the group that
16 traveled together from Minnesota.

17 THE COURT: I know all that. I'm asking you how
18 many times you practiced it, how long did you practice it,
19 how many takes did they take of you doing that.

20 THE DEFENDANT: Your Honor, there was three takes.
21 I messed up the first two and the one we see today is the
22 third one.

23 THE COURT: And how long did you practice this
24 speech?

25 THE DEFENDANT: I practiced -- I got that speech

1 in the morning, Your Honor, and then I was practicing the
2 whole day, probably four to five hours, before I got on the
3 tape.

4 THE COURT: Now, you've watched that tape. And
5 you know that you're very convincing, aren't you?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. For the government, your
8 position on sentencing?

9 MR. NARUS: Yes, Your Honor. The government
10 concurs with the Probation Office and the Court's guideline
11 calculations that the guideline range is 456 months based on
12 the statutory maximum of three hundred -- or 456, 38 years.

13 The government has made a 16-level downward
14 departure and the departure yields a range of 120 to 150
15 months or 10 to 12 and a half years in custody. That is the
16 government's recommendation, Your Honor.

17 THE COURT: On February 18, 2009 the defendant
18 pled guilty to Counts 1 and 2 of a two-count information.
19 On August 12, 2009 the defendant pled guilty to Count 3 of a
20 supplemental information. And the counts are as follows:
21 Count 1 of the two-count information, it was providing
22 material support to terrorists, in violation of Title 18,
23 United States Code, Section 2339A(a), a Class C felony;
24 Count 2, providing material support to a foreign terrorist
25 organization, in violation of Title 18, United States Code,

1 Section 2339B(a)(1), a Class C felony; and Count 3 of the
2 separate information, false statements, in violation of
3 Title 18, United States Code, Section 1001(a)(2), a Class D
4 felony.

5 The advisory guidelines are as follows as found by
6 the Court: Total offense level of 44, criminal history
7 category of VI, custody range of 456 months in prison,
8 supervised release two years to life, fine range of 25,000
9 to 250,000 dollars, and a special assessment of \$300.

10 The Court has read the presentence investigation
11 report and reviewed it. The Court has read and reviewed all
12 the submissions that have been given to the Court by the
13 government and by the defense counsel.

14 The Court has received from the government a
15 motion for a 5K1.1 motion for a downward departure because
16 of substantial assistance to the government. The Court has
17 read the *in camera* submission to the Court and heard
18 arguments in open court regarding why the Court should grant
19 that motion, both from the defense and from the government.

20 And it is clear that the defendant has given
21 extraordinary, extraordinary cooperation to the government
22 in order to break open this conspiracy and the Court grants
23 the government's motion for substantial assistance. The
24 Court has denied all of the other defense motions dealing
25 with variance and downward departures.

1 The Court will sentence as follows -- the Court
2 has reviewed and read all the pertinent United States
3 Supreme Court decisions dealing with sentencing plus all the
4 Eighth Circuit Court of Appeals decisions dealing with this
5 sentence, any decisions by other courts in other circuits
6 that dealt with the issues at hand.

7 The Court has also received from the government
8 and from the Probation Office -- excuse me -- from the
9 Probation Office from the Sentencing Guideline Commission
10 all of the sentencings across the nation dealing with
11 terrorist activities that are charged under the specific
12 charges here to make sure that this defendant and all the
13 other defendants that will be sentenced this week are within
14 the same appropriate range if their factual situation
15 applies.

16 The Court sentences as follows -- the Court has
17 also reviewed the factors under Title 18, 3553(a), and will
18 apply those in sentencing the defendant because it's
19 mandatory.

20 The defendant is hereby sentenced to the care and
21 custody of the Bureau of Prisons for a term of 120 months.
22 The term consists of 120 months on each of Counts 1 and 2.

23 And I can do 120 on Count 3?

24 PROBATION OFFICER: 96 months, Your Honor.

25 THE COURT: 96 months on Count 3, all to be served

1 concurrently.

2 No fine is imposed. Restitution is not applicable
3 to this case.

4 The defendant is sentenced to a term of 20 years
5 of supervised release. The term consists of 20 years on
6 each of Counts 1, 2, 3 -- of 1 and 2 and three years on
7 Count 3, all such terms to run concurrently. The mandatory
8 conditions that are applicable are as follows:

9 The defendant must report to the United States
10 Probation and Pretrial Services Office in the district to
11 which the defendant is released within 72 hours of release
12 from the custody of the Bureau of Prisons.

13 Next, the defendant shall not commit any crimes,
14 federal, state, or local.

15 Next, the defendant must be involved with
16 mandatory drug testing. The Court is going to suspend that
17 based on the Court's determination that the defendant poses
18 a low risk of future substance abuse, pursuant to Title 18,
19 United States Code, Sections 3563(a) and 3583(d).

20 Next, the defendant shall not possess a firearm,
21 ammunition, destructive device, or any other dangerous
22 weapon.

23 Next, the defendant shall cooperate in the
24 collection of DNA as directed by the probation officer.

25 Next, the defendant shall abide by the standard

1 conditions of supervised release that have been adopted by
2 the Court, including the following special conditions:

3 If not employed at a regular lawful occupation as
4 deemed appropriate by the Probation Office, the defendant
5 may be required to perform up to 20 hours of community
6 service per week until employed. The defendant may also
7 participate in training, counseling, daily job search, or
8 other employment-related activities as directed by the
9 probation officer.

10 Next, the defendant shall submit his person,
11 residence, office, vehicle, or any area under the
12 defendant's control to a search conducted by the United
13 States Probation Office or supervised designee at a
14 reasonable time in a reasonable manner based upon reasonable
15 suspicion of contraband or evidence of a supervision
16 violation. The defendant shall warn any other residents or
17 third parties that the premises and areas under the
18 defendant's control may be subject to searches pursuant to
19 this condition.

20 And finally, there's a \$300 special assessment --
21 that's \$100 per count that you have pled guilty to, total of
22 \$300 -- which has to be paid immediately to the Crime
23 Victims Fund.

24 Sir, if you feel the Court has not followed the
25 law in the imposition of your sentence, you have a right to

1 appeal your sentence to the Eighth Circuit Court of Appeals,
2 which sits in St. Louis, Missouri. Ms. Atwal will be your
3 attorney on that appeal. You have an absolute right to
4 appeal my sentence. That court is the higher court and they
5 review whether or not I followed the law or the Constitution
6 in sentencing you.

7 And because of the number of issues involved in
8 this case, you sit and talk to Mr. Mohring and Ms. Atwal and
9 see whether or not you wish to appeal the Court's rulings
10 and decisions on your sentencing.

11 But in any event, you have 14 days from today's
12 date to file that notice of appeal. You can have Ms. Atwal,
13 you can represent yourself, or you can hire your own
14 attorney, but that notice has to be filed within 14 days of
15 today's date to give notice to the court that you are
16 appealing my sentence.

17 And if the government doesn't feel that the Court
18 has followed the law, they can appeal also.

19 Anything further for the defense on this matter?

20 MS. ATWAL: Your Honor, for the record, I would
21 ask the record reflect my objection to the reasonableness of
22 the sentence.

23 THE COURT: It is so noted.

24 MS. ATWAL: Thank you.

25 THE COURT: Anything further for defense?

1 MS. ATWAL: No, Your Honor.

2 THE COURT: Anything further for the government?

3 MR. NARUS: No. Thank you, Your Honor.

4 THE COURT: Remanded to the custody of the
5 Marshal.

6 (Court adjourned at 3:55 p.m.)

7 * * *

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12 I, Lori A. Simpson, certify that the foregoing is a
13 correct transcript from the record of proceedings in the
14 above-entitled matter.

15

16 Certified by: s/ Lori A. Simpson

17 Lori A. Simpson, RMR-CRR

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